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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,017	06/16/2006	Jean-Louis H. Gueret	05725.1471	8808
22852	7590	09/18/2009		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER SULLIVAN, DANIELLE D	
			ART UNIT	PAPER NUMBER
			1616	
			MAIL DATE	DELIVERY MODE
			09/18/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/538,017

Applicant(s)

GUERET, JEAN-LOUIS H.

Examiner

DANIELLE SULLIVAN

Art Unit

1616

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-75 is/are pending in the application.
- 4a) Of the above claim(s) 36-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 46-75 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Election/Restrictions

Claims 36-45 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claims.

Claims 36-75 are pending examination. Claims 46-75 are under examination.

Double Patenting

Applicant has overcome the ODP rejection of copending Application No. 11/123,173 by filing a terminal disclaimer approved on 7/11/2009.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 46-62, 64, 65 and 67-75 rejected under 35 U.S.C. 102(b) as being anticipated by Desnos (US 6,174,319).

Desnos discloses a device for packaging a cosmetic product comprising an applicator and a container containing the cosmetic product, wherein the device is configured to be heated in a microwave oven, and the cosmetic product is for epilatory

waxes (column 1, lines 31-41). The device further comprises an indicator sensitive to temperature of the cosmetic (column 2, lines 23-28). The indicator is integral with the container and is thermochromic (column 3, lines 2-10). The container is composed of wood or plastic. The color change occurs over a defined temperature range and is reversible (column 3, lines 37-40; column 4, lines 45-49). The device further comprises a closure element configured to close the container which may additionally comprise the indicator (column 4, lines 2-9). The container comprises different layers of plastic materials (column 6, lines 20-22). The device may be inverted prior to use so that wax can flow out of the container via the outlet of the applicator device (column 5, lines 59 thru column 6, line 6).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 63 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Desnos (US 6,174,319).

Applicant's Invention

Applicant claims the device as addressed in above 102(b) rejection. The container further has a reference mark configured to indicate to a user a position wherein the device should be placed. The device includes a notice informing a user that the device may be placed in a microwave.

Determination of the scope and the content of the prior art

(MPEP 2141.01)

The teaching of Desnos is addressed in above 102(b) rejection.

Ascertainment of the difference between the prior art and the claims

(MPEP 2141.02)

Desnos does not teach instructions for using the device. It is well-settled law that combining printed instructions and an old product into a kit will not render the claimed invention nonobvious even if the instructions detail a new use for the product. See In re Ngai, 367 F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004).

Finding of prima facie obviousness

Rationale and Motivation (MPEP 2142-2143)

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the teachings of Desnos to further include instructions for use because combining printed instructions and an old product into a kit will not render the claimed invention nonobvious. One would have been motivated to include instructions to ensure proper use of the product.

Response to Arguments

Applicant's arguments filed 6/23/2009 have been fully considered but they are not persuasive.

Applicants argue Desnos fails to disclose a container containing a cosmetic product, wherein the cosmetic product comprises a body care product, excluding depilatory waxes. Applicants argue Desnos discloses an epilatory wax container which is in contrast with the proviso that depilatory waxes are excluded.

Applicants arguments are not persuasive. The claimed invention is directed to a container containing a cosmetic product excluding depilatory waxes which is anticipated by Desnos. Desnos discloses the claimed container comprising an epilatory wax. Desnos makes clear that there is clear demarcation between an epilatory wax and a depilatory wax. Desnos states "conventional depilatory preparations often containing sulphide chemicals, act by weakening the structure of the hair to such an extent that scraping the cream off the skin breaks the hair at skin level and thus removes it" (column 1, lines 18-21). Furthermore, Desnos states "depilatory preparations tend to have an unpleasant smell" (column 1, lines 28-30). On the other hand, Desnos states "epilatory waxes" are supplied as solids and are melted prior to use. The molten material is applied to the skin, where it cools and is then peeled away together with the unwanted hair (column 1, lines 31-36). Hence, depilatory waxes have different chemical constituents which only remove hair from the surface of the skin, while epilatory waxes remove hair beneath the surface, from the root. Therefore, Desnos anticipates the present invention.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIELLE SULLIVAN whose telephone number is (571)270-3285. The examiner can normally be reached on 7:30 AM - 5:00 PM Mon-Thur EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Danielle Sullivan
Patent Examiner
Art Unit 1616

/Johann R. Richter/
Supervisory Patent Examiner, Art Unit 1616